

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

27828

FILE: B-214552
MATTER OF: B-214552.2

DATE: March 27, 1984

Alfred D. Tavares; Ted E. Hahn

DIGEST:

Determination under Office of Management and Budget Circular No. A-76 to contract for services in lieu of performance by government employees is a matter of executive policy not reviewable in a bid protest filed by federal employees.

Alfred D. Tavares and Ted E. Hahn, both employees of the Army, protest the Army's decision to contract out the central boiler facility operation at Fort Detrick, Maryland, under solicitation DAMD 17-83-R-0033.

The protest involves a decision made in accordance with Office of Management and Budget (OMB) Circular No. A-76. Our Office has repeatedly declined to render decisions concerning the propriety of an agency's determination under A-76 to contract out instead of performing work in-house. These determinations are regarded as beyond the scope of our bid protest decision function because the provisions are matters of executive branch policy which do not create legal rights or responsibilities. See Local F76, International Association of Firefighters, B-194084, March 28, 1979, 79-1 CPD 209.

In Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38, we indicated that we would consider it detrimental to the competitive system for the government to decide to award or not award a contract based on a cost comparison analysis that did not conform to the terms of the solicitation under which offers were submitted. For that reason, we do entertain protests which allege a faulty or misleading cost comparison of the in-house estimate with the offers received. See Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD 317. In those cases, however, our review is intended to protect parties that competed from the arbitrary rejection of their offers and does not extend to nonofferors such as federal employees or taxpayers. National Association of Government Employees, Local R14-89, B-211903, July 11, 1983, 83-2 CPD 77.

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We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel